

GENDERLAB TALK SERIES#2



WHAT DOES FEDERALISM HAVE TO DO WITH GENDER EQUALITY?



photo courtesy of the artist

Dr. Marcus Brand, Head of Programme of the International Institute for Democracy and Electoral Assistance (International IDEA) in Myanmar, highlighted in his talk that in order to advance gender equality in Myanmar, both federalism and a strong constitution that protects the fundamental human rights of its people and guarantees efficient accountability and transparency of the governing body are needed.

The speaker stated the importance of gender equality within the federalism-constitution framework. Policy and resource allocation decisions may not be prioritized due to power imbalance. The underrepresentation of women in political organizations and decision-making bodies could lead to the marginalization of gender perspectives which may hinder the incorporation of gender equality in policy discussions and development. In Myanmar, there is an increase in women's representation in the parliament until the coup but very little progress had been made in terms of implementing treaties and policies intended for women's advancement.



photo source: GSCN Facebook

He also emphasized the need of having at least two levels for federalism: the federal or central level and the state level, which are defined in the constitution. States should not be governed by the federal or central government. Decisions on judicial affairs must be taken at several levels, as guaranteed in the Constitution. He stressed that a comprehensive understanding of gender equality requires a consideration of the Constitution in its entirety, rather than only its specific provisions. Women may be negatively affected as a result of the electoral system and administration. Taxation policies may also have an impact on women's access to social and economic opportunities like work, education, and health.

Furthermore, a complaint mechanism within the governance system which stipulates a 30% quota for female members in the Federal Democracy Charter (FDC) of Myanmar shall be strictly enforced at the constitutional and state levels. A constitution that ensures the decentralization of authority shall give more importance to the state and local levels because they have a direct impact on people's lives. Although others argue that the issue on gender equality should not be discussed until after the military regime ends, addressing gender equality now will simultaneously improve women's participation and empowerment.

The discussion with participants that followed focused on how unions, federal units, and federal constitutional frameworks can support gender equality in decision-making. The gender equality situations and related laws can differ across state and regions. Therefore, it is effective to have a constitutional guarantee to realize gender equality across the country. However, this can only be effective if human rights are respected and a law enforcement mechanism is in place. Achieving gender equality must be the goal of all citizens, not just of female leaders and politicians. The significance of male politicians supporting gender equality and the importance of prioritizing women's empowerment was also argued.

The current state of women in leadership roles in Southeast Asia was also brought up during the discussion. It was recommended that strong gender equality provisions should be included in the constitution. This would grant women normative jurisdiction over additional laws and operations at different levels. The debate over the old, inherently discriminatory laws and the new, non-discriminatory clause in the constitution regarding gender and sexual orientation was given as an example.



photo source: GSCN Facebook

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It is important to understand the fundamentals of non-discriminatory principles and apply current perspectives to old legal frameworks. Significant changes have been observed over time in countries with democratic elections. However, despite women's access to politics and their qualifications, some of the traditional gender roles in many societies continue to be discriminating. Dr. Marcus Brand said that in addition to the work of dedicated women's organizations, building a broad coalition is necessary. The business community, academic institutions, and the media must all support efforts to change society. Also, if boys are taught early about gender issues, they can address gender equality through laws, policies and rights. With these, the purpose of gender equality will be best understood.

In view of the current situation, it was mentioned that the FDC of Myanmar has several important references and provisions pertaining to inclusion, equality, and human rights. Thus, it is required that all governmental entities implement existing provisions from the federal to the state level to keep their responsibilities. The speaker said that the nation and the political system ought to be the primary sources of advocacy, mindset change, and capacity building. It was stressed that women can gain from a decentralized federal government throughout the phase of the transitional constitution. The participants further suggested the establishment of a gender equality or women's commission. Important considerations to make include staffing, funding, and legal authority. Additionally, maintaining the rule of law and effective access to justice should also be studied. Aside from hearing complaints, a functional judiciary that is able to make decisions with the authority in specific cases must be provided. Participants also emphasized the need for constitutional provisions on addressing economic decentralization, citizenship based on gender, and tax distribution between and among several levels of the government: the federal government, state constitutions, and local governments. The need to handle displaced communities, security sector reform, and transitional justice during the transitional phase was also mentioned. Since these concerns are all related to women and gender equality, it would be best to address them now, before the transitional period begins.



photo source: rohingyapost.com

During the latter part of the discussion, it was argued that the state is responsible as a contract partner in all types of treaties, whether multiple or bilateral. Therefore, it was asked, how can the state ensure that each region is carrying out its obligations as stipulated by these international treaties? To what extent are the subnational federal governments accountable, or report, to the federal government? It was observed that in a developed federal system, a state could contend that it is unreasonable for the state or region to be bound by international agreements, especially when a country has highly decentralized power and local autonomy. How should the new FDC handle this situation? Hence, further reflection is important.

To learn more about the details of the talk and subsequent discussion, please read the summary note.



Hosted by Gender and Development Studies (GDS)

GENDERLAB TALK SERIES#2: SUMMARY NOTE ADVANCING GENDER EQUALITY AND FEDERALISM

11 May, 2023

Gender and Federalism in Myanmar



photo source: Spring Revolution Facebook

Dr. Marcus Brand, Head of Programme of the International Institute for Democracy and Electoral Assistance (International IDEA) in Myanmar, highlighted in his talk that in order to advance gender equality in Myanmar, both federalism and a strong constitution that protects the fundamental human rights of its people and guarantees efficient accountability and transparency of the governing body are needed. The discussion focused on gender equality, federalism, and the federal constitution while reflecting on the political situation and experiences of Myanmar.

Reforming the federal and democratic systems must include gender equality that supports not only women and men but also LGBTQ+ individuals. Policy and resource allocation decisions may not be prioritized due to power imbalance. The underrepresentation of women in political institutions and decision-making bodies could lead to the marginalization of gender perspectives which may hinder the incorporation of gender equality in policy discussions and development. Implementing laws and policies that guarantee equal rights and opportunities for all genders that address discriminatory practices, promote gender mainstreaming in decision-making processes, and enact measures to tackle gender-based violence is difficult and time-consuming which may take more than a generation to achieve.

GenderLab Talk Series#2

Advancing Gender Equality in Federalism - Summary Note

The speaker stated the importance of gender equality within the federalism-constitution framework. The 2030 SDG 5 highlights achieving gender equality and empowering women and girls at all levels including women's representation in decision-making. Other SDGs cannot be achieved without gender equality since the no-one-left-behind principle is vital to SDGs. Furthermore, Myanmar ratified CEDAW in 1997. There is an increase in women's representation in the parliament until the coup but very little progress had been made in terms of implementing treaties and policies intended for women's advancement. In addition, homosexuality continues to be criminalized in Myanmar.

There were various initiatives to address women's issues during the interim period of the last 2 years after the coup: women elected representatives from the 2020 election are in the Committee which was represented by Pyidaungsu Hluttaw (CRPH); the Women Ministry has been established under the National Unity Government (NUG); and representatives from women's civil societies groups were actively involved in the National Unity Consultative Council (NUCC).

Before the discussion on advancing gender equality in federalism, it is important to have a concrete understanding of federalism. It is not just an ideology and it has been implemented with various definitions in roughly 25 to 30 countries around the world. It should be noted that there is no direct correlation between gender equality and federalism. There is no country that has fully attained gender equality. The speaker also emphasized the need for having at least two levels for federalism: the federal or the central level and the state level, which are clearly stated in the constitution. States should not be governed by the federal or central government. Likewise, decisions on legislative matters must be taken at several levels, as guaranteed in the Constitution.

Women's representation, basic human rights, and equality of treatment between all genders could be negatively impacted in the absence of the rule of law and a strong constitutional culture. He stressed that a comprehensive understanding of gender equality requires a consideration of the Constitution in its entirety, rather than only its specific provisions.

Women may be negatively affected as a result of the electoral system and administration. Taxation policies may also have an impact on women's access to social and economic opportunities like work, education, and health.

Gender equality initiatives such as CEDAW are aimed at the national level. However, despite being signed at the federal level, its implementation at the state and local levels is more important because they directly impact the lives of the people. The Federal Democracy Charter (FDC) of Myanmar has underscored anti-discrimination on the basis of gender and sexual orientation which can only be seen in three Asian countries: Thailand, Taiwan, and Nepal. Thus, a constitution that ensures the decentralization of authority shall give more importance to the state and local levels.

Additionally, 30% of women representatives' quota is included in the FDC of Myanmar but there is no emphasis at the state level. Although the establishment of a special commission on anti-discrimination and women's rights was mentioned, it does not include any legal rights or procedures. Therefore, free and fair legislation, complaint mechanisms for the governance system must be guaranteed for execution both in the constitutional framework and at the local level.

In conclusion, to guarantee gender equality in the country, the federal system needs a constitution and a legal framework that upholds everyone's fundamental human rights and encourages effective accountability and transparency. Furthermore, collaboration and coordination among stakeholders are essential for effective execution. Peace and security are critical as well. Without peace and security, it will be difficult to implement it. People should be accountable for their actions, and the law must be above the weapons. Although others may argue that the issue of gender equality should not be discussed until after the military regime ends, addressing gender equality now will simultaneously improve women's participation and empowerment. Thus, achieving gender equality requires sustained efforts, commitment, and involvement of multiple stakeholders across different sectors of society.



GenderLab Talk Series#2

Advancing Gender Equality in Federalism

Follow-up dialogue with participants

HOW TO GUARANTEE GENDER EQUALITY IN DECISION-MAKING IN THE FEDERAL CONSTITUTION, BOTH UNION AND FEDERAL UNITS, AND WHY IS IT IMPORTANT TO HAVE GENDER EQUALITY?

Gender equality is important because everyone wants to have a democratic, inclusive, and peaceful country. The roles of women are made clear in context and gender equality is not a marginal issue that can be addressed sometime in the future. Gender equality, inclusion, and respect for diversity must be the path in which a new Myanmar has to be built and it is timely to address it now. However, to be practical and concrete, there is no guarantee that anyone can offer it anywhere because that is not how the world works. Gender equality and women's empowerment are still relatively recent phenomenon in the world, even in the most advanced countries where there had been multiple generations of democracy. For instance, the right to vote was only given to women about 100 years ago. Discrimination in legislation still exists in many countries. There is no guarantee that gender equality will be realized including equal pay for equal work, and eradication of all forms of violence against women. Very few or none of the countries have actually achieved parity in terms of women's participation in the parliament.



photo courtesy of the artist

Even in countries like Sweden, France, and Germany where women hold positions as prime ministers, presidents, or 40-50% of representatives are women in the parliament, women are still frequently exposed disproportionately to online hostility or sexual violence in different forms. A constitutional guarantee will be an effective tool together with a law enforcement mechanism in place. Moreover, it is not enough that is stipulated in the constitution. It should be available, accessible, working system that can efficiently address women's issues and grievances. For example, a woman must be able to go to court and get concrete protection from a state official or from a private person against any act of discrimination.

Constitutions are frequently expressed in very generic terms, as such, other forms of legislation must be defined, clarified, and stated in detail both at the federal and state levels in decentralized entities. In addition, it is necessary to establish functional courts, social systems, commissions, complaint bodies, and a variety of institutions, including civil society organizations like NGOs. These entities must collaborate with the state in providing services and ensure that there is appropriate funding. Thus, there is a need for women to serve in the parliament's budget committee so that they can decide on how to spend public funds. Having more women in the parliament can lead to a higher chance of addressing women's concerns and specific needs. Likewise, investment on women's training and capacity building requires change in mindset. For example, Swedish public administration academies began with course content on values, inclusivity and gender equality since many political decisions are still influenced by biases and gender norms that most people grew up with which are commonly shaped by culture. The significance of male politicians supporting gender equality and the importance of prioritizing women's empowerment was also argued. Achieving gender equality must be the goal of all citizens, not just of female leaders and politicians.



GenderLab Talk Series#2

Advancing Gender Equality in Federalism

Follow-up dialogue with participants

ARE YOU SATISFIED WITH THE LEADERSHIP ROLES ASSUMED BY WOMEN IN SOUTHEAST ASIA?

It was recommended that strong gender equality provisions should be included in the constitution. This would grant women normative jurisdiction over additional laws and operations at different levels. If the constitution is meaningful, it must be guided and implemented in the state level either in other legislation or public administration. An example is the debate over the old, inherently discriminatory laws and the new, non-discriminatory clause in the constitution regarding gender and sexual orientation. It is important to understand the fundamentals of non-discriminatory principles and apply current perspectives to old legal frameworks. An effective judiciary is required for enforcement. In principle, a court may decide that a woman is ineligible to inherit land just because she is a woman based on some old piece of legislation. That woman could then go to that court or appeal against the court's decision and claim that this particular provision under which she is discriminated is not applicable with the new constitutional principle of non-discrimination. Subsequently, the higher court should go all the way up to the supreme court which would revoke the previous judgement. It means having the power to overturn all discriminatory laws.



photo source: [Cambodianesss.com](https://www.cambodianesss.com)

In that sense, a constitution that is based on the principles of equality, nondiscrimination, and fundamental rights is like a tool to improve the old legislation and remove its discriminatory elements. For it to be effective, the entire system needs to work, which means having judges who understand both the constitutional law and the essence of non-discriminatory principles and how this lens is applied to old legislation that are no longer relevant. It is important to include not just words but constitutional laws with legislative power over other laws in a new constitution. It is comparable to a trump card game. The constitutional provisions are like the Aces. They defeated everything but in order to have the power, they need to be adequately clear.

The current state of women leadership roles in Southeast Asia was also brought up during the discussion. The speaker admitted not having full knowledge with regards to female leadership in Southeast Asia. But in his opinion, traditional gender roles on patriarchy persist whether in the East or the West. Many societies are still struggling with the old concepts of gender roles and are now beginning to change in most areas, including Southeast Asia. There are a lot of changes over the years in countries that have had democratic elections. Legislation has allowed women to enter politics; however, other factors also come into play. For example, during the 2020 election in Myanmar, the specific electoral system or the nature of politics, funding, and other cultural factors made it more difficult for women to enter the political arena. In addition, Myanmar also has had only a single prominent political woman leader who came from an elite background yet, unlike other Asian countries like Bangladesh and India, she did not prioritize the fight for gender equality. Thailand has had female leaders at the highest levels of the government, which could have encouraged other women to enter the political sphere. However, it can also have an unintended effect of discouraging women from entering politics because of the way women are treated when they hold political power along with the amount of misogyny and hatred to which they are exposed to.

photo source: GSCN Facebook



GenderLab Talk Series #2

Advancing Gender Equality in Federalism

Follow-up dialogue with participants

A woman solely holding position in politics does not make it safer or more comfortable for other women to join politics. Rather, it has the opposite effect. In order to increase women's participation in politics and decision-making, different strategies may be used. Women are just as qualified as men but there are many barriers preventing them to compete at the same level as men such as economic factors, financial difficulties, misconceptions towards women leaders, hate speech, domestic violence, and many more.

Dr. Marcus Brand said that in addition to the work of dedicated women's organizations, building a broad coalition is necessary. The business community, academic institutions, and the media must all support efforts to change society. Also, if boys are taught early about gender issues, they can address gender equality through laws, policies and rights. With these, the purpose of gender equality will be best understood.

IS THERE ANY RELEVANCE IN FDC TO FULLY IMPLEMENT GENDER INCLUSION AND JUSTICE?

Although gender and inclusion issues have been addressed in the FDC, it is not a full-fledged constitution and, thus it cannot be applied legally in the same way as an interim constitution because there is no judicial system. In view of the current situation, it was mentioned that the FDC of Myanmar has several important references and provisions pertaining to inclusion, equality, and human rights. Thus, it is required that all governmental entities implement existing provisions from the federal to the state level to keep their responsibilities of those in power. For example, a provision which states that all representative bodies should have 30% women representatives — however such provision should specify which bodies this applies to. It would be good to ask all political bodies and leaders of their implementation plans. CRPH does not have 30% women, but Myanmar society can propose to have 30% women in the legislative body or transitional constitution committee for the interim period. Furthermore, FDC contains a lot of interesting provisions which can be used for advocacy purposes, and it can push the structures and systems in the right direction. FDC is a very hopeful and promising document, and it can also add international commitments that the Myanmar government may find applicable. Last year, the NUG even committed to also sign the International Covenant on Civil and Political rights (ICCPR) which can also be used as an advocacy instrument by civil society, women's groups, and others.



photo source: Washintonblade.com

Therefore, it is required that all governmental entities implement existing provisions in the constitution from the federal to the state level. The speaker said that the nation and the political system ought to be the primary sources of advocacy, mindset change, and capacity building. It was stressed that women can gain from a decentralized federal government throughout the phase of the transitional constitution.

GenderLab Talk Series#2

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DURING THIS TRANSITIONAL CONSTITUTION, WHAT KIND OF PROVISIONS SHOULD WE INCLUDE?

The participants further suggested the establishment of a gender equality or women's commission. Important considerations to make include staffing, funding, and legal authority. Additionally, maintaining the rule of law and effective access to justice should also be studied. Aside from hearing complaints, a functional judiciary that is able to make decisions with the authority in specific cases must be provided. The situation of women will be very precarious during conflict, thus achieving peace and security sector reform is critical. Participants also emphasized the need for constitutional provisions to address economic decentralization, citizenship based on gender, and tax distribution between and among several levels of the government: the federal government, state constitutions, and local governments. Federalism and decentralized government can work for women. It will work against gender equality if it provides space for people who support patriarchal systems and traditional values. The need to handle displaced communities, security sector reform, and transitional justice during the transitional phase was also mentioned considering that there will be numerous crises to handle, such as livelihood recovery and the return of Rohingya people. Since these concerns are all related to women and gender equality, it would be best to address them now, before the transitional period begins.

HOW IS THE SUBNATIONAL GOVERNMENT ACCOUNTABLE OR REPORT TO THE CENTRAL GOVERNMENT?

During the latter part of the discussion, it was argued that the state is responsible as a contract partner in all types of treaties, whether multiple or bilateral. Therefore, it was asked, how can the state ensure that each region is carrying out its obligations as stipulated by these international treaties? It is the union that holds the seat in the United Nations as a member State of the United Nations. Additionally, in international law, the State is responsible as a contract partner in a treaty whether it is a bilateral treaty or a multilateral treaty. To what extent are the subnational federal governments accountable, or report to the federal government? It was observed that in a developed federal system, a state could contend that it is unreasonable for the state or region to be bound by international agreements, especially when a country has highly decentralized power and local autonomy. While several countries address it in different ways, the solutions are often imperfect. How should the new FDC handle this situation? Hence, further reflection is important.



photo source: GESG Facebook